

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00117-01 HG
)	
Plaintiff,)	MEMORANDUM OF LAW
)	
vs.)	
)	
KENNETH CHIO HENG IONG,)	
)	
Defendant.)	
)	

MEMORANDUM OF LAWI. STATEMENT OF FACTS

As the Defendant properly points out, Count 1 of the indictment alleges an offense that occurred on or about August 9, 1998. The indictment was indeed returned on March 23, 2005, and would appear at first blush to have been returned in violation of the appropriate statute of limitations, 26 U.S.C. § 6531(2) that establishes a six-year statute of limitations for tax evasion cases. However, the Defendant was represented by Robert J. Chicoine, Esq. during the course of the investigation that led to the instant indictment. On April 30, 2004, the Defendant and his counsel extended the statute of limitations for the 1997 year, the year at issue in this indictment, from August 9, 2004 until April 15, 2005, "for the purpose of allowing the federal government to consider the appropriateness of the charges recommended by the Criminal Investigation Division, Honolulu, Hawaii." (Exhibit 1). In view of that waiver, the indictment is

timely.

It should be noted that Mr. Klein, who did not become the attorney for the Defendant until after the indictment, was unaware of the waiver in this case and, upon being advised of it, indicated he would withdraw this motion.

II. STATEMENT OF LAW

A deliberate and intentional waiver of a statute of limitations when a defendant is advised by counsel is valid and effective, and applies to a waiver of that statute prior to indictment. United States v. Sindona, 473 F. Supp. 1964 (S.D.N.Y. 1979). See also United States v. Caldwell, 859 F.2d 805 (9th Cir. 1988), cert. denied, 489 U.S. 1039 (1989).

III. CONCLUSION

For the foregoing reasons, the Defendant's motion should be denied.

DATED: August 15, 2006, at Honolulu, Hawaii.

Respectfully submitted,

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /s/ Leslie E. Osborne, Jr.
LESLIE E. OSBORNE, JR.
Assistant U.S. Attorney